IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2881 OF 2001

Shri Dharma Bhika Patil,
(Since deceased), by his heirs,
1. Smt. Indubai Dharma Patil
   (since deceased).
2. Shri Shrikant Dharma Patil,
   aged about 40 years.
3. Shri Shantaram Dharma Patil,
   aged about 38 years.
4. Shri Shashikant Dharma Patil,
   aged about 33 years.
5. Sushil Dharma Patil,
   aged 31 years.
   All Indian Inhabitants,
   residing at Block No.8,
   1st floor, Amarprem Building,
   Subhash Road, Dombivli (W),
   District Thane. ...Petitioners.
   (Orig.Defts.)

Vs.

Sou. Tarabai Anant Bhoir,
Occu.Household work, through her
Constituted Attorney and husband
Shri Anant Bhojraj Bhoir,
residing at Amar Chhaya Building,
Mahatma Phule Road, Dombivli (W),
District Thane. ...Respondent.

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Mr. V.R. Walawalkar with Mr. R.S. Deshpande for the Petitioners.
None for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 7, 2006.

ORAL JUDGMENT :

The Additional District Judge at Kalyan, allowed an appeal preferred by the landlord against the decision of the Civil Judge, Junior Division, by which the landlord's suit for eviction came to be dismissed. While allowing the appeal, the Appellate Court has held that a ground for eviction has been made out under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947. The ground for eviction under Section 13(1)(l) is that the tenant after coming into operation of the Act has “built, acquired vacant possession of or been allotted a suitable residence”.

2. The premises in question consist of a one room tenement, being Block No.8 of a property known as Amarprem Building situated at Subhash Road, Vishnu Nagar, Dombivli (West). A suit for eviction was instituted in 1992 on the ground of (i) Default in the payment of rent; (ii) Nuisance; and (iii) The tenant acquiring suitable alternative residential accommodation. The suit was dismissed by the Trial Judge on 7th December 1996. The evidence would show that the tenant had four sons. One of the

sons who was married had been accommodated in the alternative accommodation which was a small tenement consisting of one room and a kitchen. The Trial Court was of the view that the alternative premises were being used for providing residential accommodation to the married son of the tenant. That being a small one room kitchen tenement, the Trial Court was of the view that it could not be said to be suitable for the family of the tenant. The finding of the Trial Court was reversed by the Appellate Court on 1st March 2001. The Appellate Court was of the view that while the alternative accommodation was acquired in the name of the wife of the tenant, it was not the case of the tenant that she had any independent source of income. The Court was of the view that the tenant had not made out a case that the alternative premises were not suitable for the purposes of his family and an increase in the size of the family could not be a ground to hold that the alternative accommodation held by the tenant was not suitable. A decree for eviction was accordingly passed.

3. On behalf of the Petitioner, the Judgment and Order of the District Court has been questioned principally on the following grounds: (i) Under Section 13(1)(l), the acquisition must be by the

tenant and the acquisition has to be of suitable residential accommodation; (ii) As a matter of fact, the accommodation in the present case was acquired by the wife of the tenant and not by the tenant as defined by Section 5(11) of the Rent Act; (iii) There was absolutely no evidence on the part of the landlord that would suggest that the cost of acquisition had been paid by the tenant himself, nor was any cross-examination carried out of the tenant during the course of the evidence to establish such a case; and (iv) In any event, having regard to the family of the tenant and its requirement, the alternative accommodation cannot be regarded as being suitable within the meaning of Section 13(1)(l).

4. Section 13(1)(l) of the Rent Act postulates that the acquisition must be by the tenant. The second requirement of the provision is that the acquisition must be of suitable accommodation. The expression “tenant” has been defined in Section 5(11) of the Rent Act to mean any person by whom or on whose account rent is payable for any premises. The rest of the provision is not material for the purposes of the present proceedings. The tenancy in the present case stood in the name of Dharma Bhika Patil who died during the pendency of the

proceedings. In the plaint, the averment regarding acquisition of alternative accommodation was as follows :

> "The plaintiff states that the Defendant has also acquired premises in the building belonging to Shri Baliram Hendraya Joshi, Vishnu Nagar, Dombivli (West), Dist: Thane.
>
> 6(d) that the Defendant has acquired suitable residential accommodation namely, the premises in the building belonging to "Baliram Hendrya Joshi, Vishnu Nagar, Dombivli (West), Dist: Thane."

In the Written Statement the tenant denied that he had acquired any suitable alternative accommodation. In the course of the Examination-in-Chief of the landlord, the landlord deposed that the tenant had acquired a block in a building which was identified. However, the landlord also stated that the tenant continued to reside in the suit premises. On the other hand, the tenant who stepped into the witness box stated that he together with his wife, a married son and daughter-in-law and a second son continued to reside in the suit premises. The tenant deposed in the course of the cross-examination that he had four sons and three daughters. One son was of a marriageable age and another son was residing at Joshi Building in Dombivli in a flat which consisted of one room and a kitchen. Those premises were in the name of the wife of the

tenant. In answer to a question posed in the cross-examination, the tenant stated that his wife was not employed. The tenant stated that after his son was married, he went to reside in the premises belonging to his mother. The tenant denied the suggestion that despite the existence of the suit premises, he had rented suitable alternative accommodation in the name of his wife.

5. It is in the state of the aforesaid pleadings and evidence that the question which arises in these proceedings will have to be considered. In a line of decisions it has now been well settled that when rent legislation postulates the acquisition of suitable alternative accommodation by the tenant as a ground for eviction, the question that requires determination is, whether it is the tenant who has acquired alternative accommodation. Quite often the acquisition of alternative premises is not by the tenant himself, but by a member of his family. In such cases, unless it can be held that the tenant had himself acquired the alternative accommodation and that he has a right or domain in respect of those premises, a ground for eviction cannot be said to be established.

6. In **B.R. Mehta vs. Atma Devi**[1], the Supreme Court held that allotment of Government accommodation to the wife of the tenant who was employed as a teacher in a Government Girls Higher Secondary School did not amount to acquisition of alternative accommodation by the tenant himself. The Supreme Court held as follows :

> "Looked at from that point of view unless acquisition of a premises or a flat or allotment of a premises or part of a premises by the tenant in which he had domain which he can reasonably and alternatively use as a substitute for the place he is using in the tenancy it cannot lead to a forfeiture of his right to occupy his tenanted premises."

The case before the Supreme Court arose under the provisions of Section 14(1)(h) of the Delhi Rent Control Act, 1958. An earlier decision of the Supreme Court in **Prem Chand v. Sher Singh**[2], was cited before the Bench in which the wife of the tenant had purchased a flat. The Supreme Court held that in the facts of that case, it was the tenant who had acquired vacant possession at Delhi through his wife and he was not entitled to retain the old tenanted premises. While considering this decision, the Supreme Court held in **Mehta** (supra) that in that case, it had been found

1 AIR 1987 SC 2220
2 1981 DRJ 287

that the tenant's wife had purchased a flat which was available to the tenant. However, it could not be laid down as a general proposition of law that acquisition of a flat by the wife would amount to acquisition of a flat by the tenant himself. The Supreme Court referred to a judgment of the Delhi High Court in **Smt.Revti Devi v. Kishan Lal**[3], where the Delhi High Court held that the language of Section 14(1)(h) of the Delhi Rent Control Act could not be whittled down even if it was not the tenant himself but his wife or another relation had acquired alternative accommodation. The Supreme Court noted, adverting to the judgment of the Delhi High Court, that the correct position must be that if a wife or a husband acquires a property and the other spouse if he or she is the tenant, has a legal right by virtue of such acquisition to stay there, only then can such acquisition or allotment of premises attract the provisions of Section 14(1)(h). The following observations of the Supreme Court highlight the principle :

> "What is necessary is that unless there is a positive evidence, and here there is none, of acquisition of property prima facie in the name of the tenant or allotment of flat to the tenant, it cannot be said to have been acquired by or allotted to some members of the tenant's family other than the wife in her name. That cannot defeat the tenant's right under Cl.(h) of S.14(1). If there is such an acquisition by or on behalf of the tenant

3 1970 Ren CJ 417

> then the tenant and members of the tenant's family would have dominion over the acquired residence. Such acquisition would bring to the tenant the mischief of S.14 (1)(h) of the Act."

Hence it was held that the allotment of Government accommodation to the wife of the tenant would not lead to the tenant losing his protection in respect of tenanted accommodation under the Rent Control legislation.

7. In **Anandi D. Jadhav v. Nirmala Ramchandra Kore**[4], the Supreme Court dealt with a case where two sons of the tenant had constructed residential accommodation. The tenant had not contributed any money in respect of the aforesaid accommodation, nor did she shift to the house. The Supreme Court held that a ground for eviction could not be held to have been established under Section 13(1)(l) of the Bombay Rent Act, and observed as follows :

> "The expression 'acquired vacant possession', in the context, in our view, means acquisition of vacant possession of a suitable accommodation in which one has a right to reside. It must be a legally enforceable right. The first respondent does not have any such legal right to reside in the house of respondents 2 and 3. Though, it cannot be disputed that respondents 2 and 3

4 2000(3) Bom. C.R. 6

> had for a period of 30 years before building their own house lived with the first respondent as her sons and morally they are obliged to take care of the aged mother by accommodating her in their house, yet in law we cannot enlarge that obligation to legal duty to provide her residence in the house along with their family."

A similar view was subsequently taken in **Abdul Sattar v. Khutejabi**[5]. That case arose under the Karnataka Rent Control Act, 1961 of which Section 3(r) defines 'tenant' in similar terms to mean any person by whom or on whose account rent is payable. In that case, during the life time of the tenant, a house was allotted to one of his sons by the Housing Board. The tenant subsequently died and the tenancy rights devolved upon his widow and four sons including the son in whose name the house from the Housing Board had been allotted. The Supreme Court held that the surviving spouse or any son or daughter becomes a tenant only after the death of the original tenant subject to the condition that they were living with the tenant at the time of the death. On the date of the acquisition of the house, the tenant had not incurred a liability for eviction since the allotment of the house was not to the tenant on the date of allotment.

5 (2003) 5 SCC 647

8. The judgments of this Court follow a consistent rationale. In **Shankar Nana Waychol v. Mohan Ganesh Date**[6], R.A. Jahagirdar, J., formulated the principle in the following terms:

> "The acquisition of a suitable residence must necessarily be by the tenant and not any other person who is related to the tenant. In the instant case, if accommodation has been acquired by the sons of the tenant, that cannot be made a ground for evicting the tenant under Section 13 (1)(l) of the Bombay Rent Act. It is common knowledge that when the family grows some of the members of the family naturally leave the original premises and acquire other accommodation. The provision contained in Section 13(1)(l) of the Bombay Rent Act is not meant to cover such a situation. In my opinion, it is only when the tenant himself builds or acquires vacant possession or is allotted a suitable residence after the coming into operation of the Bombay Rent Act that the landlord can legitimately urge it as a ground for possession of the premises."

In another judgment of a Learned Single Judge in **Saharabegam Sikandar Shaikh v. Abdul Ali Mawaji Tejani**[7], it was similarly held that what is contemplated by Section 13(1)(l) is the acquisition of premises by the tenant for his own benefit and the benefit of his family members. In other words, Section 13(1)(l) does not contemplate cases where the defendant acquires premises not for his benefit but for the benefit of his children who are sought to be

6 1985 Bom. R.C. 51
7 AIR 1991 Bombay 181

settled in life when the said children are no longer going to continue to be the members of the family unit of the defendant. A Learned Single Judge of Gujarat High Court in **Soni Jagjivan Narsi v. Manchhaben Odhavji**[8], has held that when a tenant who has one set of rented premises takes a second set of premises on rent, and the old premises from which he has shifted to his new premises continue to be occupied by his dependents, it cannot be said that he has acquired vacant possession of a suitable residence because his eviction from his old premises will again drive his dependents from that place to his new premises and will create difficulties in accommodating them. If the evidence shows that the new premises which a tenant has taken on rent are sufficient to accommodate himself and all his dependents then certainly he can be evicted under Section 13(1)(l) of the Bombay Rent Act.

9. In the present case, the acquisition admittedly was not by the tenant, but by the wife of the tenant. Both the pleadings as well as the evidence of the landlord make no reference whatsoever to any case that the acquisition was, in fact, by the tenant himself

8 1976 All India Rent Control Journal 188

in the name of his wife. Similarly, there is no case to the effect that in the alternative premises, the tenant had any right or dominion of occupation. A general presumption cannot be drawn that the acquisition of the alternative premises by the wife must necessarily be out of the funds provided by the husband. The line of cross-examination of the tenant would reveal that no such case has in any case been sought to be established. No question to that effect was posed to the tenant when he entered the witness box. The only question which was posed was as to whether the wife of the tenant was employed, to which the answer was in the negative. The current status of employment or unemployment of the spouse of the tenant may, at the best, be indicative, but it is not conclusive to hold that she has no locus to acquire residential accommodation through funds of her own. Therefore, the first condition that is required by Section 13(1)(l), that the acquisition must be by the tenant, has not been fulfilled in the present case.

10. The second requirement of Section 13(1)(l) is that the acquisition must be of suitable residential accommodation. The Appellate Court proceeded on the basis that the tenant had not made out a case that the premises which were held in the name of

his wife, were not suitable to the members of his family. There is a clear error apparent on the face of the record in so far as this finding is concerned. A perusal of the evidence would reveal that during the course of the cross-examination, the tenant deposed that he had four sons and three daughters. He stated that one son was yet to be married and one of the other sons who had since been married, had shifted to the rented accommodation which had been obtained by his wife, together with his daughter-in-law. In fact, the tenant denied a suggestion to the effect that he had obtained suitable alternative accommodation for himself in the name of his wife. The fact that the tenant continued to reside in the suit premises was admitted by the landlord in the course of the Examination-in-Chief. The tenant also deposed that he, his wife, married son and daughter-in-law and another son continued to reside in the suit premises. The Court must, in such cases determine as to whether the alternative accommodation is suitable or otherwise. The suit premises consist of one room and a kitchen. The alternative premises also consist of one room and a kitchen. The tenant has a large family consisting of four sons and three daughters. There is merit in the submission urged on behalf of the Petitioner by Counsel that even if the daughters are

excluded from consideration for the reason that they are married and reside elsewhere, it is inconceivable that the acquisition of a one room- kitchen tenement can be regarded as an acquisition of suitable alternative accommodation for all the members of the tenant's family. The expression “suitable” is not a term of art. Suitability must be adjudged to the context of the reasonable needs of the family of the tenant. In the present case, it cannot even be suggested that a one room tenement which was rented out by the wife of the tenant is suitable enough for the tenant, his wife, two married sons and two unmarried sons.

11. For all these reasons, I am of the view that the order of the Appellate Court is completely unsustainable and suffers from an error apparent. The interference of the Court under Article 227 of the Constitution is warranted. The only ground on which the decree for eviction has been passed is the acquisition of alternative accommodation. The grounds of arrears and nuisance have been negatived by the Appellate Court. That part is not challenged. In these circumstances, the petition is allowed. The judgment and decree of the Appellate Court is quashed and set aside. The suit for eviction instituted by the landlord, R. C. S. No.130 of 1992,

stands dismissed. No order as to costs.

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